IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 537 OF 1996

Sadashiv Kondiba Khandekar ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

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Shri S.B. Shetye for the appellant.
Mrs. P.H.Kantharia APP for State.

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CORAM ; V.G.PALSHIKAR &
V.C. DAGA, JJ.

DATED; 14TH JUNE, 2005

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the judgment dated 30-8-1996 passed by the 3rd Additional Sessions Judge, Sangli in Sessions Case No. 240 of 1992, the appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the appellant and the learned APP, we have scrutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution story as exposed on re-appreciation of evidence by us stated briefly is that the accused and the deceased are related to eath other. Deceased Mangal is the mother-in-law of the accused. Her daughter named Asha was the wife of the accused. The accused was working as a coolie. The accused doubted the charactor of his mother-in-law and has formed an opinion that she was enticing young man and was spoiling them mentally and sexually. This behaviour of Mangal, the mother-in-law had factually enraged the accused and his wife Asha and there were quarrel on number of occasions due to this attitude of Mangal.

4. On 1-9-1992 between 8 and 9 p.m. the victim along with P.w.4 Ramchandra and Sakhubai had their dinner and were prepared to sleep when Uttam brother of the accused came there and wanted to sleep at their place. At around mid night the accused came there and called out victim Mangal. On hearing the call P.w.4 Ramchandra woke up. He saw Mangal opening the door and having seen the accused tried to close it again, which was forcibly opened by the accused, and entered the kitchen and saw his brother Uttam who was aged 30 years there in the kitchen. He therefore slapped Uttam at his face and threw him out. Then accused caught hold

of the victim and dashed her head on the platform of the bath room. He then hit two blows at the head of Mangal and she started bleeding from the head injuries. Because of this hue and cry neighbours arrived, pacified the accused and took him away. Sometime thereafter the victim Mangal died. Complaint of assault was lodged, investigation was conducted, and the police arrested the accused u/s. 302 of IPC for causing the murder of mangal. The prosecution examined eight witnesses to prove its case and the learned trial Judge accepting the evidence convicted the accused u/s. 302 of IPC. This order of conviction and sentence passed in this case has questioned in this appeal as stated above.

5. P.w.1 Shahaji is the panch witness who was present on 4-9-1992 along with Suresh Shinde another panch when police at the instance of the accused recovered the weapon used in the crime. He has proved the panchanama and the recovery.

6. P.w.2 Sambhaji is another panch who witnessed the arrest of the accused by police. He was present when the clothes of the accused were seized by the police and noticed that the clothes were stained with blood. He identified the accused and the articles in the

court. Thus the prosecution has proved the recovery of blood stained articles used in the crime and blood stained clothes of the accused at the time of his arrest.

7. P.w.3 is Dr. Bhupal who conducted the post martum and has proved that the death was homicidal in nature. He has given adeqate discription of the injuries and has stated that the injuries were sufficient in the oridinary course of nature to cause death.

8. P.w.4 Ramchandra was 15 years of age when he deposed in the court, and therefore was 11 years old when the assault took place. His preliminary examination disclosses that he understood the meaning of oath its santity and was therefore administered oath. He was deposed before the court about the relationship of his and the accused. He states that his sister Asha was married to the accused. He then deposed that the accused and his wife Asha reside in Sangli. Their home town is same and the witness being from village Baj, the parents of the accused, his brother Uttam all residing at Baj. The witness then goes on to narrate the incident of 1-9-1992. He states that he, his mother and grand mother had their dinner around 8 p.m. and were about to sleep at 9.30 p.m.

Around 9 p.m. Uttam came to their house by saying that he would be sleeping in their house. He i.e. Uttam accordingly slept in the kitchen of the house of the victim and the witness. The victim and the witness slept in the sofa. The brother of the accused Uttam was sleeping in the kitchen and the grand mother and the witness was sleeping in her room. At about 12 mid night the accused came and calling the mother-in-law as Mami, Mami (it is the custom of western India to refer the mother-in-law as mami). On hearing these calls, the witness woke up, and saw his mother coming from the kitchen. She then saw the accused and tried to shut the door. But Sadashiv the accused entered into the kitchen forcibly. He saw Uttam there and asked him as to why he was there and slapped Uttam in the cheek. Uttam ran away. The witness then goes on to discribe the assault by the accused on the victim. The witness has given a very graphic discription as to how the attack took place. The description truthfully given clearly shows that the accused was enraged beyond the proportion. Then parents of accused came on the spot and took away Sadashiv the accused. Parents of accused then took the injured victim Mangal to hospital where she died and was brought back in the next day morning. The witness has been extensively cross examined in relation to the local approach of the accused, the

manner of hitting by the accused and the entire situation then existing. The witness however has denied all the suggestions that Uttam earlier used to visit their house and the victim was admonished by the accused and his wife and was told not to permit Uttam to stay in their house. Though the witness has denied the suggestion in regard to any objectionable relationship between the victim and Uttam, he admits in the cross examination that after being slapped by the accused, Uttam left the place in shameful condition. From the evidence of this witness, certain things became clear, that at the time when the accused arrived and on seeing Uttam and the victim Mangal were in the kitchen, and the kitchen door was closed, the accused got enraged by finding Uttam and Mangal in the same room with the door closed, accused assaulted the victim.

9. P.w.5 is Dr. Prakash who examined Sakrubai and P.w.4 Ramchandra and has disclossed that there were minor injuries on their person, the nature being negligible. P.w.6 Mahadev is the resident of the same village and reside near the house of the victim. He was called by one Parubai around 9 p.m. He heard commotion and went to the house of Mangal and saw her lying in the sofa having injured. He was declared

hostile and cross examined as according to the prosecution he was seen the accused assaulting the victim. P.w.7 Daji is also a resident of the same village and locality and has deposed the same as P.w.6 and was therefore declared hostile. He also was supposed to be a witness of the assault by accused.

10. P.w.8 is the investigating officer PSI Ingale. He has deposed about the investigation that was conducted by him. It was on appreciation of this evidence that the learned trial Judge came to the conclusion of guilt and punished the accused as mentioned above.

11. Mr. Shetye the learned counsel on behalf of the accused has submitted that the incident as occured cannot be denied, the assault obviously has taken place because of grave and sudden provocation which according to the learned counsel was caused when the accused came to the house of victim in the midnight and saw her coming out of the kitchen after opening the door and then he saw his brother aged about 20 in the same room. The surmises was that they were there in the same room with the door closed for obvious reasons, and he seriously doubted the conduct of his mother-in-law as also his brother, the accused then entered into the kitchen room and slapped his brother who ran away. It

is thereafter that he started assaulting the victim his mother-in-law. The contention is that admittedly, according to the prosecution, the accused and his wife doubting the character and moral inregrity of the victim their mother-in-law, whose husband was staying away and who it is alleged was of loose virtue. Earlier there has been equarrels between the accused and the victim regarding the conduct of the victim. The submission of the learned counsel therefore is that seeing the victim and Uttam in one room with door closed at mid night was the sufficient reason for sudden and grave provocation of the accused who assumed illicit relationship between them at that time. It was uncontrolable for the mind of the accused that his 20 year old brother was used by victim who is not other than his own mother-in-law and the assault on the victim took place because of this. The learned counsel accepted this position and there is no reason to doubt the testimony of P.w.4 as also the testimony of other eye witnesses who saw the victim in the state of grevious hurt. Hence we see no reason to disblieve the eye witnesses.

12. We have considered the judgment of the learned trial Judge very carefully. In our opinion the learned Judge has marshalled the facts correctly and has come

to the conclusion that the accused was responsible for homicidal death of the victim is correct. The only question which therefore arises for our consideration is whether this act on the part of the accused amounts to murder as defined u/s. 300 IPC or is covered by exception (1) which says that homicidal death is not amounting to murder if caused due to grave and sudden provocation.

13. We have no doubt in our mind that the incident took place. The learned Judge has rightly held the accused guilty of assault. At the same time there is no doubt that the accused was enraged with the conduct of the victim who was found in the kitchen with the door closed with a young man of 20 years who is also heppened to be the brother of the accused. The conclusion or the surmises drawn by the accused may factually wrong. But it is a possible surmise and in the heat of anger the assault has taken place. It cannot be,in the circumstances, said that the accused had any intention to cause death of the mother in law. Infact the conduct of his parents coming there, pacifies the accused and taking the victim to the hospital, also speaks volume. In our opinion therefore the present case is one which is squarely covered by

part I of section 304. The accused assaulted the victim and never knew that the assault may result in the death of the victim. The manner in which the assault was made and the weapon with which it was made cannot be denied the knowledge of such possibility. Therefore in our opinion the accused is guilty of causing homicidal death not amounting to murder.

14. In our opinion, therefore the appeal is liable to be partly allowed. The conviction and sentence under sec. 302 is liable to be set aside and instead the accused is liable to be convicted under section 304 (I) IPC and sentenced to suffer R.I. for seven years. We accordingly allow the appeal partly. The accused is sentenced to suffer R.I. for seven years. The accused is on bail. His bail bonds are cancelled. The learned trial Judge is requested to take immediate steps with the assistance of the police to see that the accused surrenders to his bail and is put in prison to undergo the sentence as awarded by us. It is needless to mention that the accused shall be entitled to set of for the custody period. Appeal accordingly disposed of.

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